

United States District Court

SEP 5 2006

EASTERN DISTRICT OF TEXAS
 SHERMAN DIVISION

DAVID J. MALAND, CLERK

BY _____
 DEPUTY _____

UNITED STATES OF AMERICA

§

vs.

§

§

§

JUSTIN LANG

§

Case No. 4:04CR56

(Judge Schell)

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on August 24, 2006, to determine whether the Defendant violated his supervised release. The Defendant was represented by Denise Benson. The Government was represented by Josh Burgess.

On August 19, 2004, the Defendant was sentenced by the Honorable United States District Judge Richard A. Schell to 21 months imprisonment followed by 3 years of supervised release after pleading guilty to the offense of False Statements. On January 18, 2006, Defendant completed his period of imprisonment and began service of his supervised term.

On July 25, 2006, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision. The petition asserted that the Defendant violated the following conditions: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from any unlawful use of a controlled

substance; (3) Defendant shall submit to one drug test within 15 days of release from imprisonment and at least 2 periodic drug tests thereafter, as determined by the court; (4) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (5) Defendant shall report to a probation officer and shall submit a truthful and complete written report within the first 5 days of each month; (6) Defendant shall notify the probation officer at least 10 days prior to any change in residence or employment; and (7) Defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.

The petition alleges that the Defendant committed the following acts: (1) On May 27, 2006, Defendant committed the offense of Family Violence Assault; (2) On April 4, 2006, and May 2, 2006, Defendant submitted urine specimens that tested positive for marijuana; (3) On May 12, 2006, Defendant admitted to using marijuana on April 2, 2006; (4) Defendant failed to submit a written monthly report for May 2006; (5) On June 26, 2006, Defendant failed to report for a scheduled office visit; (6) On June 19, 2006, Defendant's mother informed the probation officer that Defendant moved in with his girlfriend and Defendant failed to notify the officer of his new address; (7) On April 11, 2006, Defendant took a breathalyzer exam which produced a breath alcohol content of .15; (8) On April 11 and May 17, 2006, Defendant's mother informed officers that Defendant was passed out from drinking

all night and she also made numerous calls complaining of his excessive drinking and abuse of alcohol; (9) Defendant failed to attend drug treatment sessions at Summit Counseling Center in Richardson, Texas, on April 20, May 18, June 1, 15, 22, and 29, 2006, and July 6, 2006; (10) Defendant failed to report as directed for drug testing on March 31, May 13, and 22, June 1, 6, 12, 21, and 22, and July 5 and 10, 2006; (11) Defendant was referred to Oak Haven Recovery Center in Marshall, Texas, for residential treatment to address his alcohol problem and he has failed to contact the center to finalize placement arrangements; and (12) Defendant has failed to make any payments toward his restitution balance during his term of supervised release, he is \$400 delinquent, and he is in default status with a remaining restitution balance of \$15,080.91.

Prior to the Government putting on its case, the Defendant entered a plea of true to the above listed violations. At the hearing, the Court recommended that the Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of ten (10) months, with two (2) years of supervised release, with the first four months (120 days) to be spent in a halfway house, and during the first twelve (12) months of supervised release, Defendant is to have no physical contact with his mother.

Signed this 5 day of ~~August~~²⁰, 2006.

A handwritten signature in black ink, appearing to read "Don D. Bush", written over a horizontal line.

DON D. BUSH

UNITED STATES MAGISTRATE JUDGE